

**SENATE FISCAL AGENCY
 MEMORANDUM**

DATE: May 27, 2020

TO: Members of the Michigan Senate

FROM: Joe Carrasco, John Maxwell, Cory Savino, and Michael Siracuse, Fiscal Analysts; Dana Adams, Drew Krogulecki, Stephen Jackson, and Tyler VanHuyse, Legislative Analysts; Ryan Bergan, Economist; and Jeff Mann, Associate Director

RE: Coronavirus Disease 2019 (COVID-19) Executive Orders 2020-72 through 2020-77

Overview

From May 3, 2020, through May 7, 2020, Governor Whitmer issued Executive Orders (EOs) 2020-72 through 2020-77 to maintain a state of emergency across the State of Michigan in relation to the outbreak of COVID-19 and to implement various measures in response to COVID-19 in Michigan. These measures affect, among other things, healthcare facilities, motor carriers, electronic transactions, public meetings, unemployment benefits, and exceptions to the standing stay-at-home order. The EOs will have an impact on State revenue, various State departments including Treasury, the Department of Health and Human Services (DHHS), the Department of Technology, Management, and Budget (DTMB), the Unemployment Insurance Agency (UIA), and the Department of State.

COVID-19

Coronavirus disease 2019, COVID-19, is a respiratory illness caused by a virus that can spread from person to person. Generally, coronaviruses cause mild, cold-like symptoms; however, severe diseases, such as Severe Acute Respiratory Syndrome (SARS) and Middle East Respiratory Syndrome (MERS) also are examples of disease cause by other forms of coronavirus. Reported symptoms of COVID-19 have ranged from mild (if any) cold-like symptoms in the majority of individuals, to severe illness or death.

The virus that causes COVID-19 was identified as the cause of an outbreak detected in Wuhan City, China, in November 2019. In late January 2020, the first case of COVID-19 in the United States was confirmed. The Michigan DHHS identified the first two positive cases of COVID-19 in Michigan on March 10, 2020. As of May 26, 2020, the DHHS has reported 55,104 cases and 5,266 deaths attributable to COVID-19.

Authority for Orders

Executive Orders 2020-67 and 2020-68, which continue the state of emergency and state of disaster in response to the COVID-19 pandemic, cite the Emergency Management Act (EMA) and Public Act (PA) 302 of 1945 (which pertains to the Governor's emergency powers), respectively, as authority for their issuance.¹ Under the EMA, the Governor must declare a state

¹ On April 30, 2020, Governor Whitmer issued Executive Orders 2020-66, 2020-67, and 2020-68. These EOs terminate the state of emergency under the EMA and declare new states of emergency under the

of emergency if he or she finds that an emergency has occurred or that the threat of an emergency exists. In addition, Section 1 of PA 302 of 1945 allows the Governor to proclaim a state of emergency "during times of great public crisis, disaster, rioting, catastrophe, or similar public emergency" within Michigan.

The Governor derives the authority for most of the Orders summarized in the memorandum from those same acts, namely Section 3 of the EMA, which provides (in pertinent part), that the Governor may "issue executive orders, proclamations, and directives having the force and effect of law to implement" the EMA, and Section 1 of PA 302 of 1945.²

A listing of all Executive Orders issued in response to the COVID-19 pandemic through Executive Order 2020-82, including the effective date and the expiration date of each, can be found in the appendix attached to this document.

Summary of Order Contents

Executive Order 2020-72

This Order rescinds and replaces EO 2020-37. Effective May 3, 2020, and continuing through May 31, 2020, at 11:59 PM, EO 2020-72 states that all health care facilities, residential facilities, congregate care facilities, and juvenile justice facilities must prohibit from entering those facilities visitors who:

- Are not necessary for the provision of medical care, the support of activities of daily living, or the exercise of power of attorney or court-appointed guardianship for an individual under the facility's care.
- Are not a parent, foster parent, or guardian of an individual who is 21 years old or younger and who is under the facility's care.
- Are not visiting an individual under the facility's care who is in serious or critical condition or in hospice care.
- Are not visiting under exigent circumstances or to perform an official governmental function.

The Order defines "residential care facilities" as including but not being limited to, homes for the aged, nursing homes, adult foster care facilities, hospice facilities, substance abuse disorder residential facilities, independent living facilities, and assisted living facilities.

Beginning immediately and continuing through May 31, 2020, at 11:59 PM, all of the facilities listed above must perform a health evaluation of all individuals who are not under the care of the facility each time they seek to enter the facility and must deny entry to those who do not meet the evaluation criteria. The evaluation criteria must include symptoms of respiratory infection (e.g., fever, cough, shortness of breath, or sore throat), and contact in the last 14 days with someone with a confirmed diagnosis of COVID-19.

EMA and PA 302 of 1945. The latter two orders state that any of the EOs that rested on EO 2020-33 now rest on EOs 2020-67 and 2020-68.

² Section 1 of PA 302 of 1945 specifically states that orders may designate specific zones within the area involved in the emergency in which occupancy and use of buildings and ingress and egress of people and vehicles may be prohibited or regulated; control places of amusement and assembly and of individuals on public streets and thoroughfares; establish a curfew; and control the sale, transportation, and use of alcoholic beverages and liquors, among other things.

In addition, beginning immediately and continuing through May 31, 2020, at 11:59 PM, all staff members and visitors of a residential care facility, congregate care facility, or juvenile justice facility must wear a covering over their nose and mouth when indoors or within six feet of another person. The Order also states that while the restrictions are in place, facilities covered under the Order must make best efforts to facilitate visitation with individuals under their care by phone or other electronic platforms, consistent with normal visitation policies

Executive Order 2020-73

Executive Order 2020-73 rescinds and replaces EO 2020-40, which temporarily suspended certain credentialing requirements for motor carriers transporting essential supplies, equipment, and people. The Order extends the temporary suspensions under Executive Order 2020-40, which were set to expire May 5, 2020.

Effective May 5, 2020, the Order specifies that enforcement of rules and procedures under Sections 5 and 7 of the Motor Carrier Fuel Tax Act are temporarily suspended along with any associated fines, penalties, or criminal sanctions for violation of those requirements for motor carriers providing critical assistance related to COVID-19 until June 2, 2020. The Order also temporarily suspends any other requirements administered by the Department of Treasury concerning motor carriers under the International Fuel Tax Agreement and any associated fines, penalties, or criminal sanctions.

The Order defines "critical assistance" to mean transportation and other relief services that meet immediate needs for the following purposes:

- Medical supplies or equipment related to testing, diagnosis, or treatment of COVID-19.
- Supplies necessary for community safety, sanitation, or prevention of COVID-19.
- Food for emergency restocking of stores.
- Equipment, supplied, or people necessary to establish or manage temporary housing, quarantine, or isolation facilities related to COVID-19.
- Entities designated by Federal, State, or local authorities for medical, isolation, or quarantine purposes.
- Entities needed to provide other medical or emergency services, which may be affected by COVID-19.

The Order states that critical assistance does not include routine commercial deliveries or supplies, equipment, or individuals that are not being transported in support of emergency relief efforts to COVID-19 or the transportation of mixed loads that include essential and nonessential items.

Executive Order 2020-74

Effective May 5, 2020, and continuing until June 30, 2020, at 11:59 PM, this Order rescinds and replaces EO 2020-41, relaxes strict compliance with the Uniform Electronic Transactions Act (UETA), the Uniform Real Property Electronic Recording Act (URPERA), and the Michigan Law on Notarial Acts (MLNA).

Compliance with UETA and URPERA is temporarily suspended to the extent necessary to permit the use of an electronic signature for a transaction whenever a signature is required under Michigan law, unless a law specifically mandates a physical signature. Section 18 of the UETA grants the DTMB the authority to determine to what extent State departments send and accept electronic records and electronic signatures from other entities based upon several factors, including security, the type of electronic record or signature, preservation, disposition, integrity, confidentiality, and auditability. The Order temporarily suspends strict compliance with Section 18 of the UETA to allow each State department to send and accept electronic records and electronic signatures without the approval of the DTMB.

Compliance with the MLNA is temporarily suspended to the extent that it requires a notary to be physically present when performing notary services under specifically tailored circumstances. The Order specifies that any notarial act that may otherwise require in-person notarial services may be performed by a commissioned notary using two-way real-time audiovisual technology under the following conditions:

- The technology must allow direct interaction between the notary, the person seeking notary services, and any witnesses so each can communicate simultaneously by sight and sound.
- The technology must be capable of creating an audio and visual recording of the complete notarial act and the recording must be retained as a notarial record in accordance with the MLNA.
- The individual seeking notarial services must present satisfactory identification during the video conference in accordance with the MLNA and any other applicable law.
- The individual seeking notarial services must affirmatively represent to the notary that the individual is physically within Michigan or that the documents to be notarized are intended to be filed in Michigan or that such documents involve property within, or substantially connected to, Michigan.
- Electronic signatures for notarial services must be tamper proof.
- The individual seeking notarial services must transmit the entire signed document to the notary on the same day it was signed.

The Order encourages entities and State agencies and officials to use electronic records and electronic signatures to conduct business and to use a remote electronic notary whenever a notarized signature is required. Any requirement under any Michigan law that requires an in-person witness can be satisfied with the use of two-way real-time audiovisual technology under the following conditions:

- The technology must allow for direct contemporaneous interaction by sight and sound between a signatory and a witness.
- The technology must allow for a recording to be preserved of the interaction between the signatory and the witness.
- The signatory must affirmatively represent to the witness that the signatory is physically within Michigan or that the documents to be signed are intended to be filed in Michigan or that such documents involve property within, or substantially connected to, Michigan.
- The signatory must affirmatively state to the witness what document the signatory is signing.
- Each page and each signature of the document must be shown to the witness and observed by the witness.

- The signatory must transmit the document to the witness within 24 hours after it is executed and the witness must sign the document as a witness and return it to the signatory within 24 hours after its receipt.

The Order permits the signing of any document in counterparts, barring a prohibition with the document that it may not be signed in counterparts. The Order also allows a guardian, guardian ad litem, or visitor to satisfy any visitation requirement using two-way real-time audiovisual technology that allows for direct, contemporaneous interaction by sight and sound.

While it is in effect, the Order prohibits financial institutions and registers of deeds from refusing to record a copy of an electronic record on the ground that it does not bear an original signature, so long as the notary certifies the copy as an accurate electronic record.

The Order extends the validity of a notarial commission that would have been set to expire between March 1, 2020, and June 30, 2020, until June 30, 2020.

For the purposes of the "verified user agreement" requirement of Section 4 of the URPERA, the Order requires that county recording offices deem all financial institutions and all licensed title insurers as covered by a verified user agreement for the duration of the order.

Executive Order 2020-75

Executive Order 2020-75 rescinds and replaces EO 2020-48. It was effective on May 6, 2020, and will remain so until June 30, 2020, at 11:59 PM. The Order suspends strict compliance with Section 3 of the Open Meetings Act (OMA) to alleviate any physical-place or physical presence requirements to the extent that OMA requires a meeting of a public body to be held in a physical space available to the general public, or requires the physical presence of one or more members of a public body. (Section 3 of the Act requires all meetings of a public body to be open to the public and, among other things, requires all individuals to be permitted to attend those meetings except as otherwise specified in the Act.)

The EO allows a meeting of a public body to be held electronically, including by telephonic conferencing or video conferencing, in a manner that allows the general public and members of the body to participate electronically.

A meeting held electronically is subject to the following conditions:

- The meeting must be held in a manner that allows two-way communication so that members of the public body can hear and be heard by other members and so that the general public participants can hear members of the public body and be heard by members and other participants during a public comment period.
- Members of the public body and of the general public participating electronically will be considered present and in attendance and may participate as if physically present at the meeting.
- All individuals must be allowed to participate, except as otherwise provided in the Act.
- If a public body directly or indirectly maintains an official internet presence, the body must post advance notice of a meeting held electronically (with the information prescribed in the Order) on a portion of the body's website fully accessible to the public.

- The right of a person to participate in a meeting electronically includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting, consistent with OMA.
- A public body may not require a person to register or otherwise provide his or her name or other information as a condition of participation, other than mechanisms necessary to permit the person to participate in the public comment period of the meeting.
- A person must be permitted to address a meeting under the rules established and recorded by the public body and may not be excluded except for a breach of the peace committed during the meeting.
- Members are urged to take all votes by roll call to avoid questions about how each member votes.
- If the public body directly or indirectly maintains an internet presence, it is encouraged to make an agenda and other materials related to the meeting available to the general public through its website homepage.
- Members of a public body must avoid using email, texting, instant messaging, and other forms of electronic communication to deliberate or make a decision during a meeting, or use "around-the-horn" decision-making in a manner not accessible to the public during an open meeting.

If a decision or other action of a public body is in compliance with the EO and the other requirements of OMA, it is in compliance with OMA. If a statute or rule other than OMA requires that public comments be permitted, or a public hearing held, a public body or agency may provide a means for remote public comment or participation to facilitate participation by the general public to the same extent as if the member of the public appeared in person. If not expressly authorized by statute or rule, written comment also is permitted. Also, during the period of the Order, school district boards are not required to hold meetings at least once a month.

Nothing in the Order permits a public body to limit or restrict the rights of the press or other news media.

The terms "decision", "meeting", and "public body" mean those terms as defined in Section 2 of OMA (except the Order does not apply to State legislative bodies).

A provision of the Order will prevail over any conflicting provision of a local charter, ordinance, or rule. The Order supersedes Sections 2 and 3 of Executive Directive 2020-2, which relates to access to meetings of public bodies and agencies subject to OMA.

Executive Order 2020-76

Executive Order 2020-76 extends several measures set forth in EO 2020-57, adds additional provisions, and rescinds and replaces EO 2020-57. Effective retroactive to March 16, 2020, and remaining in effect during the duration of the declared states of emergency, the Order suspends strict compliance with Section 29(a)(1) of the Michigan Employment Security Act as described below. Under Section 29(1) of the Michigan Employment Security Act (MCL 421.29), individuals are disqualified from receiving benefits for a variety of reasons including his or her leaving work voluntarily without good cause or his or her absence for three consecutive work days without contacting his or her employer. Additionally, the subsection requires medical professional approval to be classified as leaving work involuntarily for medical reasons.

The individual must be considered to have left work involuntarily for medical reasons if he or she leaves work, or may be deemed laid off if she or she becomes unemployed, for any of the following reasons: 1) he or she is under self-isolation or self-quarantine in response to elevated risk from COVID-19, 2) he or she has displayed COVID-19 symptoms, 3) he or she has had contact in the last 14 days with someone with a confirmed diagnosis of COVID-19, 4) he or she must care for someone with a confirmed diagnosis, or 5) he or she has family care responsibilities as a result of a government directive.

The Order suspends strict compliance with Section 48(3) of the Act. An individual on a leave of absence for the reasons listed above must be considered unemployed unless he or she is already on sick leave or receives a disability benefit. Under Section 48(3), an individual may not be considered to be unemployed during any leave of absence from work granted by an employer either at the request of the individual or pursuant to an agreement with the individual's duly authorized bargaining agent, or in accordance with law.

Strict compliance with subsections (4) through (7) of Rule 421.210 of the Michigan Administrative Code (which concern filing deadlines) is temporarily suspended to allow a new or additional claim for unemployment benefits filed within 28 days of the last day the claimant worked to be considered to have been filed on time. A continued claim filed within 28 days of the last day of the period for which the claimant is instructed to report and has continued to report in a claim series is considered to have been filed on time.

Strict compliance with Section 27(d) of the Act is suspended. An eligible individual who files an initial claim as of the effective date of the Order will receive up to 26 weeks of benefits payable in a benefit year. Section 27(d) of the Act specifies that eligible individuals filing initial claims after January 15, 2012, are limited to not more than 20 weeks of benefits payable within a benefit year.

The Order suspends strict compliance with Section 28c(1) and (2)(b) of the Michigan Employment Security. The UIA may approve an employer's participation in a shared-work plan upon application by the employer, regardless of whether the employer has complied with the requirements that an employer must meet to apply for approval of a shared-work plan. The Order also suspends strict compliance with Section 28c(2)(f) of the Act to allow an application for a shared-work plan to be approved without the employer's certification that implementation is instead of layoffs that would affect at least 15% of the employees in the affected unit and would result in an equivalent reduction in workers.

Strict compliance with Section 28d(1)(b)(i) of the Act is suspended to allow a shared-work plan to be approved regardless of whether it includes an employee who has been employed in the unit for less than three months before the employer applies for the plan. Section 28d(1)(b)(i) prohibits an employee who has been employed for less than three months to be included in the shared-work plan.

Strict compliance with Section 28d(2)(a) of the Act is suspended to allow the reduction percentage of a shared-work plan to be less than 15% and more than 45% if it is not less than 10% or more than 60%. Section 28d(2)(a) prohibits the reduction percentage of a shared-work plan from being less than 15% and more than 45%.

Any benefit paid to a claimant who is laid off or placed on a leave of absence may not be charged to the account of the employer or employers that otherwise would have been charged but must be charged to the UIA's nonchargeable account, instead.

Strict compliance with Section 28(1)(a) of the Act is suspended to the extent necessary to allow an unemployed individual to be eligible to receive benefits without a finding by the UIA that the individual is actively engaged in seeking work (which the suspended Section currently requires).

The Order suspends compliance with Section 29(5) of the Act to the extent necessary to allow an individual to be considered to have met the Section's requirements regardless of whether he or she performed services for the new employer and was doing permanent full-time work. Under Section 29(5), if an individual leaves work to accept permanent full-time work with another employer or to accept a referral to another employer from the individual's union hiring hall and performs services for that employer, or if an individual leaves work to accept a recall from a former employer, certain unemployment disqualification conditions apply.

Strict compliance with Section 68c of the State Employees' Retirement Act is suspended to the extent necessary to provide that the provisions of that Section do not apply to a retirant who becomes employed by the UIA or by the Michigan Occupational Safety and Health Administration on or after the Order's date. Section 68c concerns the forfeit of a retirant receiving a retirement allowance under that Act if he or she is employed by the State after October 1, 2007, among other things.

Strict compliance with Section 32(c) of the Employment Security Act is temporarily suspended. Specifically, in regards to determining an individual's nonmonetary eligibility to qualify for benefits, the UIA may not issue a determination with respect to an individual's separation from a base period employer other than the separating employer, and the individual is not required to have satisfied certain requirements of the Act as they relate to base period employer separations other than the most recent separation from the separating employer. Section 32(c) concerns making a determination in a situation when a claimant's most recent base period or benefit year separation was for a reason other than the lack of work.

Employers would be charged for unemployment benefits to the State's nonchargeable account if their employees become unemployed because of an Executive Order requiring them to close or limit operations.

A willful violation of this Order is a misdemeanor.

Executive Order 2020-77

The Order extends the measures set forth in EO 2020-70 with certain clarifications and additions. The Order takes effect May 7, 2020, and runs through May 18, 2020 (when it was rescinded by Executive Order 2020-92, which will be discussed in a subsequent memorandum).

Stay-at-Home Order

While the Order is in effect, all individuals living within the State of Michigan are ordered to stay at home or at their place of residence, except to do any of the following:

- Engage in outdoor activity or recreation, including boating and golfing, that is consistent with remaining at least six feet from people from outside an individual's household.
- Perform jobs as "critical infrastructure workers".

- Conduct minimum basic operations after being designated to perform this work by their employers.
- Perform necessary government activities.
- Perform a "resumed activity" as defined within the Order.
- Perform tasks necessary to an individual's health and safety, or to the health and safety of his or her family or household members (including pets).
- Obtain necessary services or supplies (such as groceries, take-out food, gasoline, medical supplies, and other items needed to maintain safety, sanitation, and basic residential operations) for themselves, their family or household members, and their vehicles.
- Care for a family member or a family member's pet in another household.
- Care for minors, dependents, the elderly, individuals with disabilities, or other vulnerable individuals.
- Visit an individual under the care of a health care facility, residential care facility, or congregate care facility.
- Attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
- Work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
- Attend a funeral, provided that no more than 10 people were in attendance.
- Return to a home or place of residence from outside Michigan, leave the State for a home or residence located elsewhere, or, as required by law enforcement or a court order, including transporting children pursuant to a custody agreement.
- Travel between two residences within Michigan, including moving to a new residence.
- Pick up nonnecessary supplies at the curbside of a store that otherwise had to remain closed.
- Visit a child in out-of-home care, under circumstances specified within the Order.
- Attend addiction recovery meetings attended by no more than 10 people.
- View a real-estate listing by appointment.
- Participate in training, credentialing, or licensing activities permitted under the Order.

The Order prohibits all other travel, including all travel to vacation rentals.

"Critical infrastructure workers" are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in guidance issued March 19, 2020 on the COVID-19 response. The definition includes workers in certain listed sectors, such as health care and public health, and food and agriculture.

"Workers who perform resumed activities" are defined as workers who:

- Process or fulfill remote orders for delivery or curbside pickup.
- Perform bicycle maintenance or repair.
- Work in garden stores and nurseries, and lawn care, pest control, and landscaping operations, subject to enhanced social distancing measures described in the Order.
- Work for moving and storage operations, subject to enhanced social distancing measures contained within the Order.
- Subject to social-distancing rules, workers who perform work that is traditionally and primarily performed outdoors, including forestry workers, outdoor power equipment technicians, and parking enforcement workers.

- Workers in the construction industry, including workers in the building trades, subject to social-distancing rules and other provisions described in the Order.
- Workers in the real-estate industry, including agents, appraisers, brokers, inspectors, surveyors, and registers of deeds, subject to certain restrictions.
- Workers necessary to the manufacture of goods that support workplace modification to forestall the spread of COVID-19 infections.
- Workers necessary to train, credential, and license first responders and health-care workers, including certified nursing assistants.
- Workers necessary to perform start-up activities at manufacturing facilities, including activities necessary to prepare the facilities to follow the workplace safeguards described in the Order.
- Effective on May 11, 2020, workers necessary to perform manufacturing activities, subject to workplace safeguards described in the Order.
- Workers at suppliers, distribution centers, or service providers whose in-person presence is necessary to enable, support, or facilitate another business's or operation's resumed activities.

The enhanced social distancing measures applicable to workers who perform resumed activities includes provisions that:

- Prohibit gatherings in which people can not maintain a distance of six feet.
- Limit in-person interaction between patrons and clients to the maximum extent possible.
- Provide personal protective equipment appropriate for the activity being performed.
- Limit the sharing of tools and equipment and ensure frequent cleaning of tools, equipment, and surfaces.

Individuals also must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people outside the individual's household.

The Order requires all individuals who are able to do so to wear a mask while within enclosed public spaces. Workers who perform in-person services can use homemade coverings, while N95 and surgical masks are encouraged to be reserved for medical personnel and other critical workers who interact with the public. The Order states that the Elliott-Larsen Civil Rights Act applies in full force to those who wear masks.

Operation of Businesses

The Order prohibits an individual or entity from operating a business or conducting operations that requires workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations. Businesses and operations that employ critical infrastructure workers are allowed to continue in-person operations subject to a variety of conditions.

Any stores that remained open for in-store sales must establish lines to regulate entry, with markings to enable patrons to stand at least six feet apart from one another while waiting. Stores also must do the following:

- For stores of less than 50,000 square feet, limit the total number of people (including employees) to 25% of occupancy limits.

- For stores of more than 50,000 square feet, limit the number of customers in the store at one time (excluding employees) to four people per 1,000 square feet of customer floor space; and create at least two hours per week of dedicated shopping time for vulnerable populations.

The Order prohibits anyone from advertising or renting a short-term vacation property except as necessary to assist in housing a health care professional or volunteer aiding in the response to the COVID-19 health crisis.

Government Activities

The Order allows State parks to be visited for day use and authorizes the Director of the Department of Natural Resources to close parks when necessary to minimize gatherings and prevent the spread of COVID-19.

The Order also suspends all in-person government activities at the State, county, and local level not necessary to sustain or protect life (or to support those activities). Government activities necessary to sustain or protect life include a variety of specified activities, including law enforcement, public safety, first response, trash pick-up and disposal, elections oversight, and public transit.

Violations of Orders

Executive Orders 2020-72, 2020-76, and 2020-77 specify that, consistent with Section 3 of PA 302 of 1945 (MCL 10.33) and Section 5(3) of the EMA (MCL 30.405(3)), a willful violation of these Orders is a misdemeanor.

Section 3 of PA 302 of 1945 specifies that a violation of an order, rule, or regulations made in conformity with the Act is punishable as a misdemeanor, when it states that a violation constitutes a misdemeanor. Section 5(3) of the EMA states that a person who willfully disobeys or interferes with the implementation of a rule order, or directive issued by the Governor pursuant to Section 5 of EMA is guilty of a misdemeanor. Under Section 504 of the Michigan Penal Code, if a person is convicted of a crime under State law designated as a misdemeanor for which no punishment is prescribed, the violation is punishable by up to 90 days' imprisonment or a fine of up to \$500, or both.

Fiscal Impact

Overview

The Executive Orders will have a substantial fiscal impact, immediately and in the near future. Some of these impacts will be absorbed by existing appropriations, while others may require additional appropriations in the future. For orders that prescribe a misdemeanor penalty for a violation, each may have a negative fiscal impact on the State and local governments. New misdemeanor arrests and convictions may increase resource demands on law enforcement, court systems, community supervision, and jails. However, it is unknown how many people will be prosecuted for a violation. Any additional revenue from imposed fines will go to local libraries.

Executive Order 2020-72

There are two main requirements listed under EO 2020-72. First, a reduction in the types of visitors who are allowed into facilities; second, for those individuals who meet the enhanced screening criteria, a health evaluation upon entry. These requirements apply to health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities. When determining the fiscal impact to the State and local units of government, it is necessary to ascertain which of these types of facilities, in fact, are operated by the State or local units of government and thus may realize a direct increase in operating costs.

Currently, the State operates five inpatient psychiatric hospitals: Caro Center, Center for Forensic Psychiatry, Hawthorn Center, Kalamazoo Psychiatric Hospital, and Walter Reuther Psychiatric Hospital. These five facilities are covered under the "health care facility" portion of the Order. The State also operates two juvenile justice facilities: Bay Pines Center and Shawono Center. The University of Michigan Health System operates hospitals that can be considered State-operated health care facilities. Additionally, there are many local units of government, mostly counties, that operate many of these types of facilities, so any cost increase needed to implement the Order will be borne by the facility's local funding entity.

Leaving health care facilities aside, the remainder of the facility types covered under the Order likely already have existing secured entry processes, so any enhanced screening criteria for visitors likely will not increase costs. However, to the extent that State and locally operated facilities require additional medical diagnostic tools to evaluate for fever or other symptoms, there will be a cost to State government and local units of government. For health care facilities, it is possible that the new entrance policy requirements will require new infrastructure or staffing requirements to ensure that visitors comply with them. Outside of health care facilities run by the University of Michigan health system, there will be no direct cost to State government. For health care facilities operated by local units of government, there will be additional costs.

Also, there are numerous non-State managed health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities that operate under contracts with State and local units of government. As these facilities are not under direct State management, these costs are not direct costs to the State or local units of government, but to the extent that these costs will be recovered through future contract or service rate increases, there will be an indirect cost to State and local units of government.

Additionally, the Order requires that all staff members and visitors to residential care facilities must wear a covering over their nose and mouth when indoors or within six feet of another person. For those staff members who are employed by a residential care facility that is operated by the State or a local unit of government, the governmental entity will likely have to provide the covering to meet the obligation imposed under the Order. It is uncertain as to the fiscal cost for the provision of these face coverings.

Lastly, the Order requests that facilities make best efforts to facilitate visitation by phone or electronic communication platforms to the fullest extent possible, consistent with normal visitation policies. It is not clear to what extent there is any existing infrastructure for phone or electronic communication platforms in the facilities. To the extent that there is existing infrastructure in the State-managed facilities, such as facility telephones, State-issued cell phones, or State-issued hardware that enables connection to electronic communication platforms, there will be no cost to State government. It is unclear from the text of the Order whether making a best effort requires

the facility to obtain necessary infrastructure to allow for the facilitation of visitation. If the Order requires procurement of goods needed to comply with the Order there would be direct costs to State government and any local units of government that are a fiduciary for a facility covered under the Order.

Executive Order 2020-73

The Order will have a negative fiscal impact on the State and Department of Treasury. The State will experience a revenue loss from reduced license and permit fees for motor carriers exempt under the Order. The Department will experience minor administrative costs to ensure compliance with the Order, which will be covered with existing staff and appropriations.

Executive Order 2020-74

Executive Order 2020-74 will have an indeterminate, positive fiscal impact on the State and local units of government. The Order is designed to encourage the transaction and exchange of signed or notarized business or real property documents with the aid of video conferencing instead of in-person requirements. It should be noted that the three Acts cited in the EO already validate electronic transactions and signatures. The Order only addresses three types of electronic transactions currently prohibited by law; those of the individual State departments (which no longer will need approval from the DTMB to conduct business electronically), those involving county recording offices (who will not need an established, verified user agreement to conduct business with licensed financial institutions or licensed title insurers), and those involving notarized documents, which traditionally require in-person notarial services.

The positive fiscal impact on State and local units of government will come from direct or indirect revenue as a result of the increased flow of business transactions (including Department contracts), deed recordings, and real property transactions. The degree of this impact will depend upon the ability of the State and the business community to adapt to, and employ, the use of electronic video conferencing tools.

Executive Order 2020-75

The Order will have an indeterminate, though likely minor, fiscal impact on State and local government. The provision to hold meetings remotely is optional; therefore, any costs or savings will depend on the actions of individual departments and public bodies. Public bodies required to reimburse members for the cost of attending meetings may have fewer costs if members do not have to travel to the meetings. However, there may be additional costs related to the upgrade or purchase of the technology required to conduct the meetings. Any additional administrative costs related to notices is expected to be minor and will be handled within existing appropriations.

Executive Order 2020-76

Executive Order 2020-76 will have a negative fiscal impact on the UIA and the Michigan Unemployment Trust Fund. The UIA will experience additional administrative costs to implement necessary changes to the administrative procedures and Information Technology Systems, which are one-time costs. The UIA has hired additional staff and administration to process the additional claims from eligible individuals in response to this and other EOs. These costs may extend beyond the state of emergency declaration, as benefits will be paid out for up to 26 weeks and compliance

with various reporting requirements over that time will have to be tracked. The UIA has received \$14.6 million in additional Federal dollars from the CARES Act to address these additional costs.

This Order and the other executive orders closing certain businesses will have a significant negative impact on the Michigan Unemployment Trust Fund. In calendar year 2019, around 214,000 individuals received benefits with an average of 47,200 weekly payments made each week. The Unemployment Trust Fund had a fund balance above \$4.6 billion at the end of 2019.

The UIA projects an increase of 14% in total benefit payments, because of EO 2020-76'S extension of benefit payments from 20 weeks to 26 weeks. This will bring the projected payments made in calendar year 2020 from \$760.0 million to \$870.0 million.

Allowing additional individuals to qualify to receive unemployment benefits will result in additional payments from the Michigan Unemployment Trust Fund. The number of individuals who may self-isolate or self-quarantine because of COVID-19 and qualify for unemployment insurance benefits under EO 2020-76 is indeterminate. It is also indeterminate how many employees will be laid off or will continue to be laid off because of business closures and reductions. Since the Order does not charge unemployment insurance payments to businesses with employees who become unemployed because of these executive order, additional claimants will be a total loss to the Unemployment Trust Fund. In calendar year 2019, claimants received benefits for an average for 11.3 week with an average weekly payment of \$315. Statute allows individuals to received up to \$362 in weekly benefits depending on their previous quarterly earnings and the number of dependents in the household. This means that for every additional 100,000 individuals who receive unemployment insurance benefits, the Fund will pay out an additional \$31,500,000 to \$36,500,000 for each week those individuals are unemployed or unable to work.

The Order's expansion of shared-work plans could result in more claimants receiving a reduced unemployment insurance payment. This could decrease the weekly payment to claimants, which would lower the potential loss to the Michigan Unemployment Trust Fund.

In 2019, Michigan had approximately 4.4 million wage and salary employees, including 473,000 in durable goods manufacturing, 381,000 in food services and accommodations, and 464,000 in retail trade. If 500,000 of these employees become unemployed (as opposed to having reduced hours) and are affected by COVID-19-related measures, the Fund will pay out an additional \$157.5 million to \$182.5 million per week while these employees are unemployed.

Executive Order 2020-77

The Order, and subsequent orders of the same character, will reduce State tax revenue, particularly from individual and corporate income taxes and the sales tax, by an unknown amount that will depend on how long and the degree to which business activity is reduced or that individuals are affected. For individuals, the impact also will be affected by the degree and extent to which individuals continue to receive pay, receive unemployment compensation or otherwise maintain income levels, draw down savings or maintain consumption, work from home, and the degree to which any changes result in prolonged or permanent changes in employment or other financial conditions. Given the magnitude of economic activity affected by the Executive Order, the revenue reductions could be significant and would affect revenue in both fiscal year (FY) 2019-20 as well as FY 2020-21 (when annual payments are due and/or reconciled).

The Department of State could see a decrease in revenue from various vehicle and driver license transactions. While only late fees are being waived while the Order is in effect, all fees will be due and eventually will be paid so there is no large anticipated change to revenue. However, the Order could affect vehicle sales, which could reduce the amount of revenue the Department receives. However, these costs are indeterminate and will depend on how sales are affected and how long the stay-at-home order is in effect.

Conclusion

The EOs summarized above implement various measures in response to COVID-19 in Michigan. These measures affect, among other things, healthcare facilities, motor carriers, electronic transactions, public meetings, unemployment benefits, and exceptions to the stay-at-home order. The EOs will have an impact on State revenue, various State departments including Treasury, the DHHS, the DTMB, the UIA, and the Department of State.

If you have any questions regarding these Executive Orders, please do not hesitate to contact us.

/mh

Attachment

c: Christopher Harkins, Director

Executive Orders related to COVID-19 (as of 5/12/2020)				
EO 2020-	Title	Effective Date	Rescinded by	End Date
4	Declaration of State of Emergency	3/10/2020	EO 2020-33	4/1/2020
5	Temporary prohibition on large assemblages and events, temporary school closures	3/13/2020	EO 2020-11	3/16/2020
6	Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities	3/14/2020	EO 2020-6	3/14/2020
7	Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities	3/14/2020	EO 2020-37	4/5/2020
8	Enhanced restrictions on price gouging	3/16/2020	EO 2020-18	4/13/2020
9	Temporary restrictions on the use of places of public accommodation	3/16/2020	EO 2020-20	3/22/2020
10	Temporary expansions in unemployment eligibility and cost-sharing	3/16/2020	EO 2020-24	3/25/2020
11	Temporary prohibition on large assemblages and events, temporary school closures	3/16/2020		4/5/2020
12	Enhanced support for deliveries	3/16/2020	EO 2020-44	4/13/2020
13	Temporary enhancements to operational capacity and efficiency of health care facilities	3/17/2020	EO 2020-49	4/14/2020
14	Temporary extension of deadline to redeem property for nonpayment of delinquent property taxes	3/18/2020		5/29/2020*
15	Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards	3/18/2020	EO 2020-48	4/14/2020
16	Expanding child care access during the COVID-19 emergency	3/18/2020	EO 2020-51	4/15/2020
17	Temporary restrictions on non-essential medical and dental procedures	3/20/2020		*
18	Enhanced restrictions on price gouging	3/20/2020	EO 2020-53	4/17/2020

Executive Orders related to COVID-19 (as of 5/12/2020)				
EO 2020-	Title	Effective Date	Rescinded by	End Date
19	Temporary prohibition against entry to premises for the purpose of removing or excluding a tenant or mobile home owner from their home	3/20/2020	EO 2020-54	4/17/2020
20	Temporary restrictions on the use of places of public accommodation	3/22/2020	EO 2020-43	4/13/2020
21	Temporary requirement to suspend activities that are not necessary to sustain or protect life	3/24/2020	EO 2020-42	4/9/2020
22	Extension of county canvass deadlines for the March 10, 2020 Presidential Primary Election	3/24/2020		4/30/2020
23	Enhanced authorization of remote means for carrying out state administrative procedures	3/25/2020	EO 2020-45	4/13/2020
24	Temporary expansions in unemployment eligibility and cost-sharing	3/25/2020	EO 2020-57	4/22/2020
25	Temporary enhancements to operational capacity, flexibility, and efficiency of pharmacies	3/25/2020	EO 2020-56	4/21/2020
26	Extension of April 2020 Michigan income tax filing deadlines	3/27/2020		7/31/2020
27	Conducting elections on May 5, 2020 using absent voter ballots	3/27/2020		5/5/2020
28	Restoring water service to occupied residences during the COVID-19 pandemic	3/28/2020		*
29	Temporary COVID-19 protocols for entry into Michigan Department of Corrections facilities and transfers to and from Department custody; temporary recommended COVID-19 protocols and enhanced early-release authorization for county jails, local lockups, and juvenile detention centers	3/29/2020	EO 2020-62	4/26/2020
30	Temporary relief from certain restrictions and requirements governing the provision of medical services	3/29/2020	EO 2020-61	4/26/2020
31	Temporary relief from standard vapor pressure restrictions on gasoline sales	3/30/2020		5/31/2020

Executive Orders related to COVID-19 (as of 5/12/2020)				
EO 2020-	Title	Effective Date	Rescinded by	End Date
32	Temporary restrictions on non-essential veterinary services	3/31/2020	EO 2020-34	4/2/2020
33	Expanded emergency and disaster declaration	4/1/2020	EO 2020-66 EO 2020-67	4/30/2020
34	Temporary restrictions on veterinary services	4/2/2020		*
35	Provision of K-12 education during the remainder of the 2019-2020 school year	4/2/2020	EO 2020-65	4/30/2020
36	Protecting workers who stay home, stay safe when they or their close contacts are sick	4/3/2020		*
37	Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities	4/5/2020	EO 2020-72	5/3/2020
38	Temporary extensions of certain FOIA deadlines to facilitate COVID-19 emergency response efforts	4/5/2020		6/4/2020
39	Temporary relief from certain restrictions and requirements governing the provision of emergency medical services	4/7/2020		*
40	Temporary relief from certain credentialing requirements for motor carriers transporting essential supplies, equipment, and people	4/8/2020	EO 2020-73	5/5/2020
41	Encouraging the use of electronic signatures and remote notarization, witnessing, and visitation during the COVID-19 pandemic	4/8/2020	EO 2020-74	5/5/2020
42	Temporary requirement to suspend activities that are not necessary to sustain or protect life	4/9/2020	EO 2020-59	4/24/2020
43	Temporary restrictions on the use of places of public accommodation	4/13/2020	EO 2020-43	4/30/2020
44	Enhanced support for deliveries	4/13/2020	EO 2020-81	5/11/2020
45	Enhanced authorization of remote means for carrying out state administrative procedures	4/13/2020	EO 2020-80	5/11/2020

Executive Orders related to COVID-19 (as of 5/12/2020)				
EO 2020-	Title	Effective Date	Rescinded by	End Date
46	Mitigating the economic harms of the COVID-19 pandemic through the creation of a spirits buyback program for restaurants and bars throughout the state	4/13/2020		*
47	Temporary extension of validity of driver's licenses, state identification cards and registration	4/13/2020	EO 2020-78	5/8/2020
48	Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards	4/14/2020	EO 2020-75	5/6/2020
49	Temporary enhancements to operational capacity and efficiency of health care facilities	4/14/2020	EO 2020-82	5/12/2020
50	Enhanced protections for residents and staff of long-term care facilities during the COVID-19 pandemic	4/15/2020		5/13/2020
51	Expanding child care access during the COVID-19 pandemic	4/15/2020		5/13/2020
52	Temporary extension of certain pesticide applicator certificates	4/17/2020		*
53	Enhance restrictions on price gouging	4/17/2020		5/15/2020
54	Temporary prohibition against entry to premises for the purpose of removing or excluding a tenant or mobile home owner from their home	4/17/2020		5/15/2020
55	Michigan Coronavirus Task Force on Racial Disparities	4/20/2020		*
56	Temporary enhancements to operational capacity, flexibility, and efficiency of pharmacies	4/21/2020		5/19/2020
57	Temporary expansions in unemployment eligibility and cost-sharing	4/22/2020	EO 2020-76	5/6/2020
58	Temporary suspension of certain timing requirements relating to the commencement of civil and probate actions and proceedings	4/22/2020		*
59	Temporary requirement to suspend activities that are not necessary to sustain or protect life	4/24/2020	EO 2020-70	5/15/2020

Executive Orders related to COVID-19 (as of 5/12/2020)				
EO 2020-	Title	Effective Date	Rescinded by	End Date
60	Temporary safety measures for food-selling establishments and pharmacies and temporary relief from requirements applicable to the renewal of licenses for the food-service industry	4/24/2020	EO 2020-71	5/1/2020
61	Temporary relief from certain restrictions and requirements governing the provision of medical services	4/26/2020		*
62	Temporary COVID-19 protocols for entry into Michigan Department of Corrections facilities and transfers to and from Department custody; temporary recommended COVID-19 protocols and enhanced early-release authorization for county jails, local lockups, and juvenile detention centers.	4/26/2020		5/24/2020
63	Temporary suspending the expiration of personal protection orders	4/27/2020		7/21/2020
64	Affirming anti-discrimination policies and requiring certain health care providers to develop equitable access to care protocols	4/29/2020		*
65	Provision of K-12 education during the remainder of the 2019-2020 school year	4/30/2020		*
66	Termination of the state of emergency and disaster declared under the Emergency Management Act in Executive Order 2020-33	4/30/2020		4/30/2020
67	Declaration of state of emergency under the Emergency Powers of the Governor Act, 1945 PA 302	4/30/2020		5/28/2020
68	Declaration of states of emergency and disaster under the Emergency Management Act, 1976 PA 390	4/30/2020		5/28/2020
69	Temporary restrictions on the use of places of public accommodation	4/30/2020		5/28/2020
70	Temporary requirement to suspend activities that are not necessary to sustain or protect life	5/1/2020	EO 2020-77	5/7/2020

Executive Orders related to COVID-19 (as of 5/12/2020)				
EO 2020-	Title	Effective Date	Rescinded by	End Date
71	Temporary safety measures for food-selling establishments and pharmacies and temporary relief from requirements applicable to the renewal of licenses for the food-service industry	5/1/2020		5/30/2020
72	Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities	5/3/2020		5/31/2020
73	Temporary relief from certain credentialing requirements for motor carriers transporting essential supplies, equipment, and people	5/5/2020		6/2/2020
74	Encouraging the use of electronic signatures and remote notarization, witnessing, and visitation during the COBID-19 pandemic	5/5/2020		6/30/2020
75	Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards	5/6/2020		6/30/2020
76	Temporary expansions in unemployment eligibility and cost-sharing	5/6/2020		*
77	Temporary requirement to suspend certain activities that are not necessary to sustain or protect life	5/7/2020		5/28/2020
78	Temporary extension of the validity of driver licenses, state identification cards, and certain vehicle registrations	5/8/2020		7/31/2020
79	Temporary suspension of youth work permit application requirements	5/11/2020		6/8/2020
80	Enhanced authorization of remote means for carrying out state administrative procedures	5/11/2020		6/8/2020
81	Enhanced support for deliveries	5/11/2020		5/25/2020
82	Temporary enhancements to operational capacity and efficiency of health care facilities	5/12/2020		6/9/2020
*The end date for these marked items will be the end of the declared state of emergency or a date reasonably related to the end of the declared state of emergency.				